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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

RASHONE BIBLE,

Defendant and Appellant.

A155273

(Contra Costa County  
Super. Ct. No. 05-161044-3)

Rashone Bible appeals a restitution order entered after she pled no contest to felony hit and run (Veh. Code, § 20001, subd. (b)(1)) and was placed on probation. She contends the trial court violated state law and her constitutional rights by conducting the restitution hearing in her absence. We conclude any error was harmless and affirm.

**BACKGROUND**

**A.**

“[A] victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime.” (Pen. Code, § 1202.4, subd. (a)(1).)<sup>1</sup> The amount of restitution is to be determined by the sentencing court, “based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution.” (§ 1202.4,

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

subd. (f).) The defendant is entitled to a hearing “to dispute the determination of the amount of restitution.” (§ 1202.4, subd. (f)(1).)

**B.**

Bible struck the 14-year-old victim and his dog with her car while the victim was crossing the street in a crosswalk, failed to stop, and then fled. The victim was hospitalized, and the dog died.

In exchange for dismissal of other counts, Bible pled no contest to felony hit and run (Veh. Code, § 20001, subd. (b)(1)) in the instant docket and misdemeanor resisting an executive officer (§ 69) in another docket. The negotiated sentence included three years of formal probation, 270 days in county jail, and restitution. As to restitution, the signed change of plea form provides: “I understand that conviction of the charge(s) will require me to pay appropriate restitution to the victim(s) of my crimes and/or to pay a restitution fine of not less than \$200 and not more than \$10,000 . . . .”

After acceptance of her plea, a dispute arose about restitution. When Bible objected to direct victim restitution of \$25,357.64, the People withdrew the offer, and the trial court denied Bible’s motion for specific performance. Bible filed a petition for writ of mandate, and a different panel of this court issued an alternative writ. In response, at a hearing Bible attended, the trial court reinstated the original plea bargain and accepted Bible’s plea. The court then sentenced Bible consistent with the plea bargain. She was ordered to pay a \$300 restitution fine and report to probation within five business days. The trial court set a restitution conference for June 1, 2018, stating, “Your appearance is waived, Ms. Bible. That means you don’t have to appear unless [defense counsel] feels that you need to.”

**C.**

The court continued the restitution conference several times after Bible’s counsel said he had been unable to reach her to determine whether she wished to challenge the People’s revised restitution request of \$8,368.17. Each time, the court indicated Bible need not appear at the continued conference. Bible also missed two probation appointments, and a bench warrant was issued.

Almost three months after her sentencing, the trial court found Bible voluntarily absented herself and, over defense counsel's objection, set a formal restitution hearing. Bible did not appear at the hearing but was represented by counsel. The victim's mother testified on the basis for the \$8,368.17 request, which included torn clothing, a broken cell phone, medical copayments, mileage, and lost wages. Bible's counsel cross-examined her. The court ordered restitution in the full amount requested.

### DISCUSSION

Bible contends the trial court violated state law and her constitutional rights by conducting the restitution hearing in her absence. We conclude any error was harmless.

A criminal defendant has a constitutional and statutory right to be present at critical stages of a criminal prosecution. (*People v. Espinoza* (2016) 1 Cal.5th 61, 72; U.S. Const., 6th & 14th Amends.; Cal. Const., art. I, § 15; § 977, subd. (b)(1).) This right includes the right to be present at restitution hearings. (See *People v. Robertson* (1989) 48 Cal.3d 18, 60 [right to be present at sentencing]; *People v. Dehle* (2008) 166 Cal.App.4th 1380, 1386 [abuse of discretion to conduct restitution hearing without presence of prosecutor].) The right to be present is not absolute, however. It may be expressly or implicitly waived. (§§ 1043, 1193; *Espinoza*, at p. 72.)

Error involving a defendant's right to be present is "subject to harmless-error analysis [citations] unless the deprivation, by its very nature, cannot be harmless." (*Rushen v. Spain* (1983) 464 U.S. 114, 117, fn. 2; accord, *People v. Mendoza* (2016) 62 Cal.4th 856, 901.) " " " " 'Defendant has the burden of demonstrating that [her] absence prejudiced [her] case or denied [her] a fair trial.' " " " " (*People v. Delgado* (2017) 2 Cal.5th 544, 569; *People v. Gonzales* (2012) 54 Cal.4th 1234, 1254; but see *Chapman v. California* (1967) 386 U.S. 18, 24 ["constitutional error . . . casts on someone other than the person prejudiced by it a burden to show that it was harmless"].) A constitutional violation of the right to be present is harmless if we are convinced beyond a reasonable doubt it did not affect the outcome. (*People v. Robertson, supra*, 48 Cal.3d at p. 62.)

Even if we accept Bible’s argument and assume her federal constitutional rights are implicated, any error was harmless. The amount of restitution awarded (\$8,368.17) was less than the potential amount she acknowledged in her plea. (See § 1202.4, subd. (f); *People v. Nystrom* (1992) 7 Cal.App.4th 1177, 1181 [“defendant has no basis for complaint where the total monetary liability (the combined amount of fines and restitution) does not exceed the maximum of which the defendant was advised”].) Bible’s counsel attended the restitution hearing and cross-examined the victim’s mother about several claimed expenses but objected to none of them. Bible does not suggest she would have provided evidence at the hearing or claim to have personal knowledge of the victim’s expenses. She does not argue any expenses were unreasonable. In short, Bible has not identified—either in this court or the trial court—how her presence would have affected the outcome of the restitution hearing in any way, and we see no basis for concluding it would have. (See *People v. Wilen* (2008) 165 Cal.App.4th 270, 289–290 [concluding similar state law error was harmless].)

#### **DISPOSITION**

The judgment is affirmed.

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BURNS, J.

WE CONCUR:

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JONES, P. J.

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NEEDHAM, J.

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